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10 Attorneys for Defendant J. Cruzen

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 **BRADLEY M. HIXON,**

15 Plaintiff,

16 v.

17 **Correctional Officer J. CRUZEN,**

18 Defendant.

19 C 07-6078 WHA

**DECLARATION OF
 CYNTHIA C. FRITZ IN
 SUPPORT OF REPLY TO
 PLAINTIFF'S OPPOSITION
 TO MOTION TO DISMISS**

20 I, Cynthia C. Fritz, declare as follows:

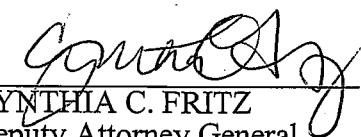
21 1. I am an attorney admitted to practice before the courts of the State of California and
 22 before this Court. I am employed by the California Attorney General's Office as a Deputy
 23 Attorney General in the Correctional Law Section, and I am assigned to represent Defendant J.
 24 Cruzen in this case. I am competent to testify to the matters set forth in this Declaration, and if
 25 called upon to do so, I would and could so testify.

26 ~2. Attached as Exhibit A is a true and correct copy of Plaintiff's Opposition to
 27 Defendant's Motion to Dismiss served on May 13, 2008.

28 Decl. Fritz Supp. of Reply to Opp.'n Mot. to Dismiss

Hixon v. Cruzen
 C 07-6078 WHA

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed on May 28, 2008, in San Francisco, California.

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CYNTHIA C. FRITZ
Deputy Attorney General

EXHIBIT A

- 1

"OBJECTION"

YOUR HONOR I OBJECT TO THE DEFENDANT'S MOTION OF DISMISSAL FAILURE TO EXHAUST ME REMEDIES.

Your Honor in Exhibits (A) I So filed my original 602 Appeal on feb 10. 2008 TO MR. MEDINA with an inmate REQUEST form due to the fact that my 602 in Ad-Seg was coming up missing due to this prior Green wall behavior here at Salinas Valley. I also send a Extra copy of my 602 Appeal for the second level to Sacramento due to my original 602 came up missing that letter would also be in Exhibits (A) on feb 19. 2008 CCI Appeals Coordinator Medina send my REQUEST back stating that my 602 never went through the mail. Enclosed is that supporting fact.

In Exhibits (B) is (2) other different 602 Appeals of the same incident I send to Sacramento and Internal Affairs which was send back to S.V.S.P. and was processed as a duplicate your honor we tried on many days and times in sending my 602 out as it never reached its place 602 See porter v. Nussle 534 U.S. 516 (2002) & Booth v. Churner 532 U.S. 731 (2001)

Your Honor A prison Guard's ACTIONS are an action under "Color of State law" See Monroe v. Pape 365 U.S. 167 (1961) Cruzen was on the job exercising the power that comes from his position or AUTHORITY So on

J

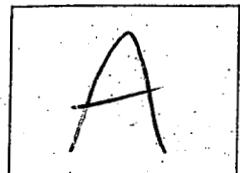
November 11, 2007 Clo Cruzen Threatened
Cuffed and Slndered me with His Cruel work
of Harassement and discrimination By calling
me a "Faggot Ass Bitch" So your Honor is doing
so he violated my due process clause & equal
protection clause based on Im suppose to be
protected by These laws and that no prison offi
are suppose to discriminate against me on
the basis of my race or any other arbitrary
category, such as my religion, nationality
sex, income, or political beliefs.

Clo Cruzen was suppose to follow any
and all rules set forward in his position
as an officer of CDCR. There for your
Honor my 602 appeal should be consider
EXHAUSTED

IT IS SO ORDERED

B. Hixon
77815

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 6 PAGES

JURISDICTION: (CHECK ONLY ONE)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

State of California

Cezar

Memorandum

Date : January 8, 2008

To : Inmate Hixon, # T-78115

Subject: STAFF COMPLAINT RESPONSE - APPEAL # D-07-05091

APPEAL ISSUE: The appellant alleges Correctional Officer J. Cruzen made discriminating comments and alleges that Correctional Officer J. Cruzen stated that he was going to falsify documents in order to prevent his return to Facility A.

DETERMINATION OF ISSUE: A review of the allegations of staff misconduct presented in the written complaint has been completed. Based upon this review your appeal has been handled as follows:

PROCESSED AS A STAFF COMPLAINT APPEAL INQUIRY
 REFERRED TO THE OFFICE OF INTERNAL AFFAIRS (OIA).

SUMMARY FOR APPEAL INQUIRY:

You were interviewed on January 8, 2008 by Correctional Lieutenant R. Mojica and stated there was nothing further to add to what was written in the appeal. The appellant further stated that names could not be provided of staff or inmates to corroborate the story.

A Confidential Inquiry ^{WAS} conducted. There were no witness(es) questioned as the appellant failed to provide any. The following information was reviewed as a result of your allegations of staff misconduct: this appeal and its entire contents.

This matter has been referred to the Office of Internal Affairs for follow-up and a possible investigation. If investigated, upon completion of that investigation you will be notified as to whether the allegations were SUSTAINED, NOT SUSTAINED, UNFOUNDED, EXONERATED or that NO FINDING was possible.. In the event that the matter is not investigated, but returned by OIA to the institution or region to conduct a Confidential Inquiry, you will be notified upon the completion of that inquiry as to whether it was determined that staff violated, or did not violate policy.

FINDINGS FOR AN APPEAL INQUIRY:

Your appeal is PARTIALLY GRANTED at the First level Second level:

An inquiry into your allegation (has been / is being) conducted.
 An investigation is being conducted by the Office of Internal Affairs

ALL STAFF PERSONNEL MATTERS ARE CONFIDENTIAL IN NATURE. As such, the details of any inquiry will not be shared with staff, members of the public, or inmates. Although you have the right to submit a staff complaint, a request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the staff complaint process. However, you have the right to be notified if after a review of your allegations, it is determined that staff violated CDCR policy. In this case:

The inquiry is not yet complete
 The inquiry is complete. Staff did not violate CDCR policy.

Allegations of staff misconduct do not limit or restrict the availability of further relief via the inmate appeals process. If you wish to appeal the decision, you must submit your staff complaint appeal through all levels of appeal review up to, and including, the Director's Level of Review. Once a decision has been rendered at the Director's Level of Review, your administrative remedies will be considered exhausted.

R. Grounds
 R. Grounds, Correctional Administrator Complex I

1/11/08
 Date

44868

RECEIVED

DEC 4 2007

AWARD OF EXPENSES

INMATE APPEAL ROUTE SLIP

To: CA 2 12-507
PLA to CAL

DEC 11 2007

Facility "A" (Date: 12/10/01)

Date: December 3, 2007

From: INMATE APPEALS OFFICE

Re: Appeal Log Number **SVSP-D-07-05091** By Inmate **HIXON, T78115**

Please assign this appeal to appropriate staff for **FIRST** level response.

Appeal Issue: STAFF COMPLAINTS

~~12/11/07~~ 1.10.18

Due Date: 01/10/2008

Special Needs:

1.3.8 12.12.07

STAFF INSTRUCTIONS: Per Director's Rule 3084.5(f) (2) first level appeal review requires a personal interview with the inmate unless the appeal is granted. This policy is not within the institution's jurisdiction and cannot be waived. Director's Rule 3084.5(f) (3) provides that a telephonic interview may be conducted if the inmate is not available in person.

Begin response with GRANTED, DENIED, PARTIALLY GRANTED or WITHDRAWN. When complete, return appeal to the Appeals Office. All first-level appeals require signature of the Division Head. Appeals that are incomplete will be returned for appropriate completion.

Refer to D.O.M. 54100 for instructions.

T. VARIZ, CC-II / E. MEDINA CC-II
Appeals Coordinators
Salinas Valley State Prison

Pls R/A to
Ayard staff
assigned to Ayard

SVSP INMATE APPEALS OFFICE
RECEIVED COMPLETED RESPONSE ON
JAN 10 2008
1ST LVL 2ND LVL

RECEIVED

DEC 07 2007

ASSOC. WARDEN

STATE OF CALIFORNIA

1 of 3 COPIES

DRAFT COPY
DEPARTMENT OF CORRECTIONAL
AGENCIESINMATE PAROLEE
APPEAL FORM
CDC 602 (12/87)Location Institution/Parole Region
1. 515P d Date 07-05-09 Category 7
2. _____

DR

You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious Illness, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

C/O J. Cruzen

| | | | |
|-------------|----------------|-----------------|--------------------------|
| NAME: HIXON | NUMBER: T78115 | ASSIGNMENT: N/A | UNIT/ROOM NUMBER: DB 131 |
|-------------|----------------|-----------------|--------------------------|

5-3391

A. Discuss Problem: (A) on 11/11/07 C/O Cruzen made some discriminating comments

towards me by calling me "a faggot ass bitch" he also stated to me that he was sure that I go to Ad-Sec with 115 so I can't go back to this unit he told me that he was going to write false documentation on me with 115 so that I can't go back to a yard clause they don't like homosexuals on that yard that is why they're trying to get rid of all of us cause we're NOSEN. B. (B) on 11/11/07 this is the 3rd 602 I sent out but the other two didn't make it C/O Cruzen has made different threats towards me since I been located in this unit

RECD NOV 21 2007 MHA

If you need more space, attach on additional sheet.

A. Action requested: (1) for J. Cruzen to be reprimanded on this situation (2) for 115 to be brought to justice (3) to NOT use against me a verbal form to see a doctor for stress and stress (4) for this to be placed into his file (5) for me to be transferred to a yard due to Cruzen threats towards (6) to have a restraining order against J. Cruzen

RECD NOV 27 2007

Inmate/Parolee Signature: *Brenda Hixon*

Date Submitted: 11/15/07

B. INFORMAL LEVEL (Date Received: _____)

Staff Response: *BYRAGG BYRAGG BYRAGG*

Staff Signature: _____

Date Returned to Inmate: _____

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BYRAGG BYRAGG BYRAGG

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control Form BC-1E, Inmate Claim

CDC Appeal Number: _____

CC: You Hixon T78115

Mr. Evans

I had to send this 602 to
your office due to the fact that
recently my 602 has been com-
up missing so I had to do
it this way please.

Please help me

I wish to
be interviewed
by only you
please. There is
so much more

I wish to
discuss
with you

Respectfully

B. Hixm

T7815
D8-131

STATE OF CALIFORNIA
RIGHTS AND RESPONSIBILITY STATEMENT
CDOR 1868 (Rev. 10/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

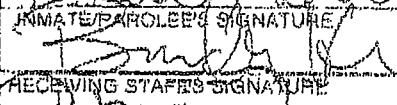
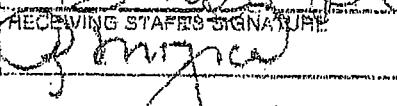
RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections and Rehabilitation has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must review and execute the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parole] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

D-1 116-4

| | | |
|---|---|---|
| COMPLAINANT'S PRINTED NAME <u>Bradley Hixon</u> | COMPLAINANT'S SIGNATURE  | DATE SIGNED 11/11/08 |
| INMATE/PAROLEE PRINTED NAME <u>Bradley Hixon</u> | INMATE/PAROLEE'S SIGNATURE  | CDC NUMBER DATE SIGNED F78115 11/11/08 |
| RECEIVING STAFF'S PRINTED NAME <u>R. Myrick</u> | RECEIVING STAFF'S SIGNATURE  | DATE SIGNED 11/11/08 |

DISTRIBUTION:
ORIGINAL -
Public - Institution Head/Parole Administrator
Inmate/Parolee - Attach to CDC form 602
Employee - Institution Head/Parole Administrator
COPY - Complainant

INMATE REQUEST FOR INTERVIEW

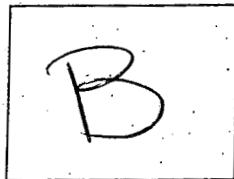
| | | | |
|--|------------|-----------------------------|--------------|
| STATE OF CALIFORNIA CIVIL CODE | | DEPARTMENT (1) CORRECTIONAL | |
| DATE | TO | FROM (LAST NAME) | CIVIC NUMBER |
| 2-10-08 | Ace | Wixson | TM815 |
| HOUSING | BED NUMBER | WORK ASSIGNMENT | |
| D2 | 116 | | |
| OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.) | | | |

Clearly state your reason for requesting this interview.
You will be called in for interview in the near future if the matter cannot be handled by correspondence.

You are not meeting guide lines to my 1002 Log #
D-07-05091 and I send my second level response to
you and my deadline is almost up your violating my
due process rights this is my 4th request complaint
to the database does not indicate receipt of
disposition 07-5091 for second level review. Eloy Medina

INTERVIEWER SIGNATURE: Eloy Medina DATE: 2/9/08

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 6 PAGES

JURISDICTION: (CHECK ONLY ONE)

- MUNICIPAL COURT
- SUPERIOR COURT
- APPELLATE COURT
- STATE SUPREME COURT
- UNITED STATES DISTRICT COURT
- STATE CIRCUIT COURT
- UNITED STATES SUPREME COURT
- GRAND JURY

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



January 17, 2008

Appeals Coordinator
Salinas Valley State Prison
P.O. Box 1020
Soledad, CA 93960-1020

RE: HIXON, BRADLEY, T78115,
IAB# 0716890 STAFF COMPLAINTS

To the SVSP Appeals Coordinator:

The Director's Level Inmate Appeals Branch needs your assistance in resolving this inmate appeal which has been screened back to you for further action.

Please respond directly to the appellant. No response to this office is necessary. This appeal appears not to have been processed within the regulatory time constraints. Please ensure that the inmate is informed as to the reason for delay in processing.

Appellant claims that he file a staff complaint appeal with your office and has never received any response. Please see the attached correspondence to verify the appeal in question. Please inform inmate as to the status of appeal.

N. Grannis

N. GRANNIS, Chief
Inmate Appeals Branch

3 of 4
Copies
STATE OF CALIFORNIA
INMATE PAROLEE
APPEAL FORM
CDC 602 (12/87)

Staff Misconduct Complaint

DEPARTMENT OF CORRECTIONS

Location: Institution/Parole Region Log No. Category

1. SVSP 1. _____ 7
2. _____ 2. _____

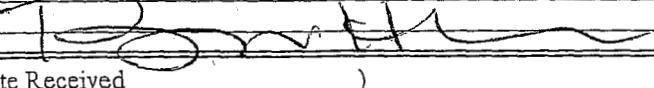
You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeal Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

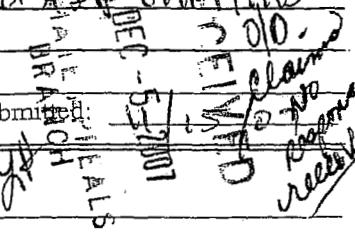
| | | | |
|-------|--------|------------|------------------|
| NAME | NUMBER | ASSIGNMENT | UNIT/ROOM NUMBER |
| HUXON | T78115 | | D8 131 |

A. Discuss Problem: 3391 (A) on 11/1/07 % J Cruzen Made Some discriminating Comment towards me by calling me A "Faggot Ass Bitch" He also state to me that he will make that I go to Ad-Seq w/a 115 so I Can't go back to this Building (2) He Said to me that he was going to write false documentation on me with Sgt Metcalfe so that I can't go back to a yard. cause they don't like homosexuals on that yard that's why their trying to get rid of all of us cause we're nasty & worthless this is the 3rd 115 I send out because other two didn't make it. % J Cruzen has made different threats towards me Sir I been located in his unit which is Building (2)

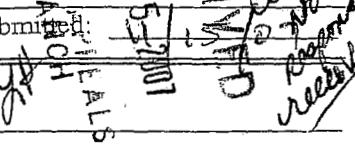
If you need more space, attach on additional sheet.

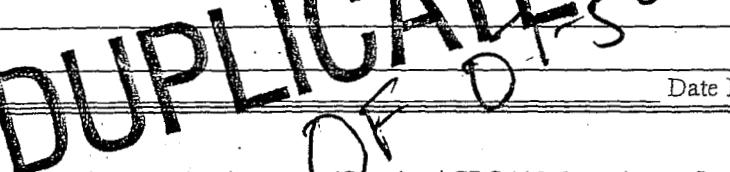
A. Action requested: ① For % J Cruzen to be reprimanded on this situation ② To be brought to just not to use reprisal against me ③ To see a doctor about my stress & distress ④ To be placed in a cell ⑤ To have a restraining order on Cruzen ⑥ To be transferred ASAP out of this prison due to Cruzen's Threats Towards me.

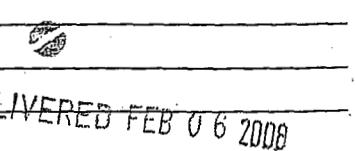
Inmate/Parolee Signature: 

Date Submitted: 

B. INFORMAL LEVEL (Date Received _____)

Staff Response: 

Staff Signature: 

Date Returned to Inmate: 

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: 

Date Submitted: 

Note: Property/Funds appeals must be accompanied by a completed Board of Control Form BC-1E, Inmate Claim

CDC Appeal Number: 

NOV 27 2007

08/18/07

To whom it may concern.

My name is Bradley M. Hixon T78115. I am currently housed in Salinas Valley State Prison (Ad-seg) on retaliation against me. Based on (602) complaint that I filed on different staff members on A yard. We recently submitted a (602 Appeal) on 2 staff members located on A yard. (See (602 Appeal enclosed) I AM a Transgendered pre-op inmate and was transferred from Mule-Creek in sometime around Nov. 2010. I was transferred on a non-adverse transfer with no disciplinary action. I've been through so much discrimination here based on my criminal offense and sexual orientation I've been set up on charges that I didn't commit or say. I've been physically abused and verbally harassed by A yard staff.

My family is aware of the situation and I just need to be interviewed and a solution made please help me.

Enclosed

cc. 602 Appeal

I fear for my life

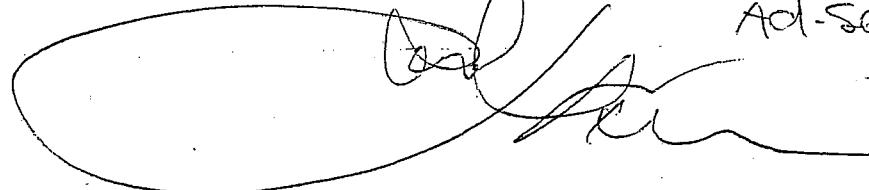
If housed on A yard
around Sgt Mercalife
or C/o J. Cruzen

Respectfully,

Ms. Alyana -AKA-

B. Hixon T78115 D8-131

Ad-se



Dear chief of inmate appeals...

12-2-07

My name is Bradley M Hixon T78115 Im currently housed in Ad-Seg up in Salinas Valley State prison, I filed a 602 inmate appeals on Correctional Officer J. Cruzen who is currently assigned to ALFA yard (SNY) Based on Staff Misconduct with me Enclosed: is a xtra copy of My 602 I filed and the appeals coordinator is and has objectLY failed to responded to my 602 that I filed within my normal time limits that I have to file. (15 days)

My order is for you TO please order prison officia TO remedy the problem on the theory that the delayed appeal response violates CDC Rules and Infringed upon the right of access to the courts. I've already file a 183 Civil complaint TO the court BUT Salinas Valley state prison Appeals Coordinator has failed to send me a Log # and a reasonable response.

This issue has been on going with correctional officer Cruzen for over a period of 1 month intil my placement in Ad-Seg.

Please See attached Memorandum dated
By Appellant on 12-2-07 / 602 Appeal comp:
please forward my 602 and have them process
IT on Time

Thank you.

Respectfully.

B. Hixon T78115


T-15

Memorandum

December 2, 2007

Inmate: Bradley Hixon CDC # T78115 DB-131

TO: Chief Inmate Appeals Coordinator (Sacramento)

GoodEvenning Chief, please take this Question into consideration concerning your Appeal Coordinator CC-II T. Variz who Misuse His Authority and Show unprofessional and inability to Perform His duties as A CC-II Appeals Coordinator. Chief this individual have been previously written up for his corrupt races discriminations and abuse & His participate unethical illegal Criminal acts by not allowing appellant to file a CDC inmate/parollee appeal form 602. So therefore Chief I have no other mean at SVSP to be able to exhaust my administrative remedies through that office ...

I'm truly seeking Justice in the interest by you Sir Because chief, as I have informed my family members about this Matter that I'm legally in the Protected Custody of CDC Please help me Chief Respectfully Submitted. also I have file a civil suit

Respectfully,
B. Hixon T78115 DB-131

PS. (See attached Exhibit)
"A" Section

Attached to 602 Appeal.

STATE OF CALIFORNIA
 RIGHTS AND RESPONSIBILITY STATEMENT
 CDCR 1858 (Rev. 10/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections and Rehabilitation has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

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| | | |
|---|--|--|
| COMPLAINANT'S PRINTED NAME <u>Bradley Hixon</u> | COMPLAINANT'S SIGNATURE <u>B Hixon</u> | DATE SIGNED <u>11/15/07</u> |
| INMATE/PAROLEE PRINTED NAME <u>Bradley Hixon</u> | INMATE/PAROLEE'S SIGNATURE <u>B Hixon</u> | CDC NUMBER <u>T78115</u> DATE SIGNED <u>11/15/07</u> |
| RECEIVING STAFF'S PRINTED NAME | RECEIVING STAFF'S SIGNATURE | DATE SIGNED |

DISTRIBUTION:

ORIGINAL

Public - Institution Head/Parole Administrator

Inmate/Parolee - Attach to CDC form 602

Employee - Institution Head/Parole Administrator

COPY - Complainant

AFFIDAVIT

I, Michael Drebert K89472, declare, under the penalty of perjury that I am a witness to the following events that took place on November 11, 2007 and that the information I offer throughout this statement is true and correct.

On Nov. 11, 2007 while housed in A2-112, my cellmate YM Hixon T78115 failed to return to the cell that we were housed in, after the conclusion of dayroom (approx. 3:00 P.M.) After dinner, at approx. 6:00 P.M., an inmate informed me that YM Hixon was going to Ad-seg. A few minutes later % J. Cruzen walked by my cell for count as I attempted to ask him if my cellmate (YM Hixon) was going to "the hole" and why? He ignored my questions, gave me a "dirty look" and kept walking. A few minutes after that %o Noguera came to my cell door asking for YM Hixon's property. I then asked him (%o Noguera) why YM Hixon was going to "the hole" He told me that the reason was petty and that he attempted to speak up for YM Hixon but %o J. Cruzen was not hearing it and that YM Hixon would be going to "the hole" because %o J. Cruzen said he felt "threatened".

Upon my arrival to Ad-seg., YM Hixon and I agreed to be cellmates and have remained cellmates to this day. On or about the second week of December 2007, I am a witness to the fact that YM Hixon's mail (and legal mail) has disappeared after being picked up by staff.

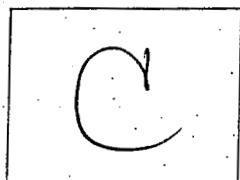
The foregoing is true and correct. This statement has been written and signed without stress or duress.

Michael Drebert K89472

Michael Drebert

Date: 1/21/08

EXHIBIT COVER PAGE



EXHIBIT

DESCRIPTION OF THIS EXHIBIT:

NUMBER OF PAGES TO THIS EXHIBIT: 5 PAGES

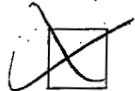
JURISDICTION: (CHECK ONLY ONE)

MUNICIPAL COURT

SUPERIOR COURT

APPELLATE COURT

STATE SUPREME COURT



UNITED STATES DISTRICT COURT

STATE CIRCUIT COURT

UNITED STATES SUPREME COURT

GRAND JURY

STATE OF CALIFORNIA

INMATE PAROLEE
APPEAL FORM
CDC 602 (12/87)

Institution/Parole Region

File No.

Category

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You may appeal any policy, action or decision which has significant adverse affect upon you. With the exception of Serious 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeal Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

Processing Appeals

| | | | |
|-------|--------|------------|------------------|
| NAME | NUMBER | ASSIGNMENT | UNIT/ROOM NUMBER |
| HIXON | T78115 | N/A | DB 131 |

S 3391 (A) on 11/11/07 C/O J cruzen made some discrimination

A. Discuss Problem
Comments towards me. By calling me "A Faggot Ass Bitch" He also stated that he will make sure that I go to Ad-Seq w/a 115 so I can't go back to his building (2). He said to me that he was going to write false documentation on me with Sgt McCalfe. So that I can't go back to A yard, cause they don't like homosexuals on that yard that is why their trying to get rid of all of us, cause we're nasty and worthless this is the 3rd loc I send out but the other two didn't make it. C/O J cruzen has made recent threats towards me. Since I been located in his building which

If you need more space, attach on additional sheet.

A. Action requested
① for J Cruzen to be reprimanded on situations like this
his to be brought to justice ③ to NOT use against me with reprisal ④ for me to
- doctor for my stress and distress ⑤ for this to be placed into his file ⑥ for me
- transferred out the institution due to C/O J cruze's threats towards me
⑦ and to have a restraining order against him ASAP Please

Inmate/Parolee Signature:

Brenda Hixson

Date Submitted: 11/15/07

B. INFORMAL LEVEL (Date Received _____)

Staff Response:

RECEIVED JAN 04 2008

Staff Signature:

Date Returned to Inmate:

C. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigators Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed
Board of Control Form BC-1-E, Inmate Claim

CDC Appeal Number: _____

CC: Brenda Hixson T78115
Warden Evans Susp

Internal Affairs

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UNITED STATES DISTRICT COURT

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Northern DISTRICT OF CALIFORNIA

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Petitioner/Plaintiff)
Bradley M. Hixon)
vs.)
Ch. J. Cruzen)
Defendant/Respondent.)

CASE NO. C07-60078 WHAMOTION FOR APPOINTMENT
OF COUNSELCOMES NOW, Petitioner/Plaintiff Bradley M. Hixon

respectfully requesting appointment of counsel pursuant to 28
United States Code (U.S.C.), §1915(d). Appointment of counsel
is necessary because Petitioner is a state prisoner, who is
unlearned in the law, having only a 7.0 grade education;
indigent and cannot afford to obtain counsel, and because of
his incarceration, is unable to obtain crucial evidence under
discovery that only an attorney can obtain through cooperation.

Although the District Court cannot appoint counsel per se

MALLARD v. UNITED STATES COURT for the SOUTHERN DISTRICT OF

IOWA, 490 U.S. 296, 307-308 (1989)), the District Court does

not have broad discretion to request counsel for indigents

under 28 U.S.C., § 1915(d); however, the appointment of Counsel

1 is reserved for exceptional circumstances. No clear definition
 2 of this standard exists, but it turns on the quality of two (2)
 3 basic factors. The two-prong test is:

4 "A finding of exceptional circumstances requires an
 5 evaluation of both 'the likelihood of success on the
 6 merits and the ability of the petitioner to articulate his
 7 claims pro se in light of the complexity of the legal
 issues involved.' Neither of these factors is dispo-
 8 sitive and both must be viewed together before reaching a
 9 decision." TERRELL v BREWER 935 F.2d 1015 (9th Cir. 1991).

10 "First, the District Court should consider the merits of
 11 the indigent's claim. Even where the claim is not frivolous,
 12 counsel is often unwarranted where the indigent's chances of
 13 success are extremely slim, such as, 'because the law is
 14 clearly settled. Such action would be futile'". LIGARE v
HARRIS, 128 F.2d 582, 583 (7th Cir. 1942)).

15 Petitioner/Plaintiff contends that he has passed the first
 16 prong of TERRELL v BREWER (supra) as his claim(s) are not
 17 meritless because under the 1996 Prison Litigation Reform Act,
 18 all in forma pauperis actions brought by prisoners are to be
 19 screened and summarily dismissed sua sponte if they are found
 20 to be frivolous, malicious, or fails to state a claim on which
 21 relief can be granted. RODGERS v DEBOE, 950 F. Supp. 1024, 1028
 22 (S.D. Cal. 1977); 28 U.S.C. § 1915(e)(2)(B)(i) and (ii)).

23 Also, there is no "clearly settled" case law making the claim
 24 of "futile," as every such claim as presented in Petitioner's/
 25 Plaintiff's complaint must stand or fall on its own merit if
 26 the claims are supported by evidence. Petitioner/Plaintiff
 27 prevails, and if not, he loses.

28 Whether legal issues involved are complex or not is
 subjective. Certainly, to a qualified and skillfully trained

1 attorney, no legal issue is too complex, if the legal issue is
 2 in that attorney's field of expertise. But even a professional
 3 attorney is not expected to be competent outside his or her
 4 field of training. MALLARD v UNITED STATES DISTRICT COURT for
 5 the SOUTHERN DISTRICT of IOWA, 490 U.S. 296, supra). There-
 6 fore, how can a prisoner pro se litigant, with no more than
 7 a(n) 7.0 grade education, be expected to overcome complex
 8 procedural rules and answer responses prepared by teams of
 9 highly skilled and seasoned state's attorneys, whose only job
 10 is to thwart prisoner law suits?

11 "Most actions require development of further facts during
 12 litigation and a pro se incarcerated litigant will seldom be in
 13 a position to investigate all the necessary facts to support
 14 the case." WILBORN v ESCALDERON, 781 F.2d 1328, 1331 (9th
 15 Cir. 1986).

16 Therefore, "Where the indigent is in no position to
 17 investigate crucial facts, counsel should be appointed
 18 MACLIN v FREAKE, 650 F.2d 885, 886 (7 th Cir. 1981)).
 19 It has long been held in this Circuit that "[it] might be
 20 that an appointed attorney could, by way of deposition, obviate
 21 the necessity of transporting the plaintiff, or, at least,
 22 preserve testimony for subsequent hearings." UNITED STATES v
 23 MADDEN, 352 F.2d 792, 793 fn.1 (9th Cir. 1965).

24 If the Court does not request that counsel represent
 25 Petitioner, it is in all likelihood that Petitioner's/
 26 Plaintiff's case will not only be prejudiced, but lost. Not
 27 for want of meritorious claim, but rather for want of evidence
 28 to prove [the] merit within the claims, which could have only

1 been obtained with and through the professional expertise
2 and assistance of counsel.

3 CONCLUSION

4 For the foregoing reasons, and in the "Interest of
5 fairness in justice," Petitioner/Plaintiff respectfully that
6 the Court appoint counsel in this matter before the Court.

7 Respectfully submitted,

8 DATED: May 13, 2008

Brady N. Nixon

9 Plaintiff/Petitioner

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